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October 4, 2008

Honorable Susan Illston
United States District Court Judge
United States District Court for
the Northern District of California
400 Golden Gate Avenue
San Francisco, California 94104

Re: Tamara Doukas v. County of San Mateo et al
Case No. 02336 SI

Dear Judge Illston:

Yesterday, October 3, 2008, you hear arguments on an OSC re: Jurisdiction that you issued in the above referenced case. At the hearing, Kevin Smith, attorney for Peninsula Humane Society and Debbi Denardi represented to you that Plaintiff had filed a proposed Fifth Amended Complaint which contained a cause of action under 42 U.S.C. 1983 that was identical to the complaint in the action before your honor. His representation was false. In Defendant County of San Mateo and Peninsula Humane Society's Brief re Jurisdiction he made the same false statement. In Plaintiff's Reply Brief re Jurisdiction I corrected him (see footnote 1.). At the hearing when he repeated the false statement I stated that I did not think that was true. I was not sure because I had not recently reviewed that issue and I thought perhaps I was mistaken. I assumed he would not misrepresent such a fact to the Court.

When I returned to my office I looked at the proposed Fifth Amended Complaint as well as the currently pled Fourth Amended Complaint. Neither has a 42 USC 1983 cause of action and no reasonable attorney could possibly believe either one does. In fact, Mr. Smith had made the same false assertion in Defendant's Brief re Jurisdiction and I corrected it in footnote 1 of Plaintiff's Reply. After the hearing before your Honor, I emailed Mr. Smith, I faxed him a copy of the email, and I called him, each time asking him to notify you to correct the record. He has never even replied.

Attached to my declaration in support of the Reply are the filed Fourth Amended Complaint and the proposed Fifth Amended Complaint. **As is obvious, neither complaint contains a 1983 cause of action.**

Although I would not usually communicate with a court after a matter is submitted, I did think it important that the record be corrected on this issue. Mr. Smith is unwilling to correct his clear factual misrepresentations to the court and therefore I am doing so.

Very truly yours,

Daniel Berko

Cc: All Counsel (via PACER)